FILE COPY

FILED
JUL 3 1947

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1946.

No. 140

DISTRICT OF COLUMBIA, *Petitioner*,

v.

JOHNSON & WIDMAYER, INC., *Respondent*.

## BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

JO. V. MORGAN,
*Attorney for Respondent.*

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1946.

---

No. 1504

---

DISTRICT OF COLUMBIA, *Petitioner*,

v.

JOHNSON & WIMSATT, INC., *Respondent*.

---

## BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

---

The respondent, in respect of the sales made outside the District, and here involved, was required as a part of the sales transactions to deliver the lumber before it could collect the purchase price, and that such delivery was the final act in such transactions (Rec. 19 and 20.)

The contention of the District of Columbia in this proceeding is a complete reversal of its position with respect to sources of income in unitary businesses. In *Eastman Kodak Co.* v. *District of Columbia*, 76 U. S. App. D. C. 339, 131 F. 2d 347 (1942), and in like cases before and after that case, the legal and taxing authorities of the District have

consistently maintained that where orders for the purchase of merchandise is accepted *without* the District, but title passes *within* the District the *entire net income* from such transaction is from sources within the District of Columbia, without the allocation or allowance of any part of such net income for manufacturing, fabrication, engineering and other activities in relation to the merchandise performed without the District. As was done by taxing of the District in the *Eastman Kodak Co.* case and other large unitary businesses, a formula was used to arrive at what part of the *total net* income of taxpayer was represented by the net income from the particular transaction culminating in the District, which could have been determined, and perhaps more accurately but with more tedious computation, by what is generally known as "separate accounting." It was such formula that is mentioned in the statute and regulations and so understood by the District, and its employment has never been a recognition or admission by the District in the instances above cited that any part of the income was earned in any place other than the District of Columbia. As a matter of fact, the respondent in filing its claim for refund and determining the amount to which it was entitled used the formula adopted by the Assessor for determination of what portion of the respondent's *entire net* income was from its sales without the District of Columbia (See Exhibit "A-1" to the claim for refund for 1939, Record, page 6; and Exhibit "B-1" to the claim for refund for 1940, Record, page 8). In other words, all that the respondent claimed and all that it was allowed by the Board of Tax Appeals of the District of Columbia was that proportion of the respondent's net income as its sales *without* the District bore to its entire sales, which is exactly what is contemplated by that portion of Section 4(b) the District of Columbia Income Tax Act and Article 3(b)(1) of the Regulations, both quoted in page 18 of petitioner's brief. So much for the "formula."

The principle upon which the court below decided this proceeding, and for which the respondent here contends, has been maintained, as above observed, by the District of Columbia and its taxing and legal authorities since the enactment of the law in 1939. It was judicially settled by the United States Court of Appeals in 1942 by the decision of ~~the~~ ~~then~~ Mr. Justice Vinson of that court in *Eastman Kodak Co.* v. *District of Columbia, supra.* It was repeatedly announced in decisions of the federal courts and the United States Tax Court relating to statutes identical with the District of Columbia law, and has been recently approved in the trinity of cases in this court, *McLeod* v. *Dilworth Co.*, 322 U. S. 327; *General Trading Co.* v. *State Tax Commission*, 322 U. S. 335, and *International Harvester Co.* v. *Department of Treasury*, 322 U. S. 349. It is a matter of interest local to the District of Columbia only, and as such has been settled judicially by the highest court of that jurisdiction. If it is of any general or national interest, it has been settled by this court. It does not appear to be a matter of such moment or importance as would warrant the granting of a writ of certiorari.

For the reasons stated the respondent urges that the petition for writ of certiorari be denied.

Respectfully submitted,

Jo. V. Morgan,
*Attorney for Respondent.*